

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

77-1134

To be argued by
GRAHAM HUGHES

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-1134

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

—v.—

GEORGE MOSS and AMERICAN IDENTIFICATION
PRODUCTS,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**BRIEF FOR APPELLANTS MOSS AND AMERICAN
IDENTIFICATION PRODUCTS**

GRAHAM HUGHES

Attorney for Defendants-Appellants
New York University School of Law
40 Washington Square South
New York, New York 10012
(212) 498-2565

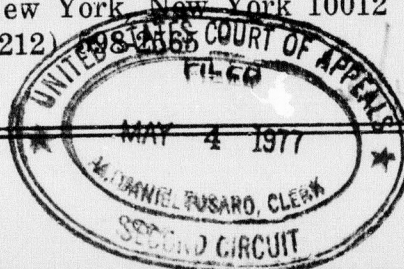


TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
Statement of Case	2
A. The Background	3
B. The Evidence on Counts One and Two	4
C. The Evidence on Counts Three and Four	7
D. The Evidence on Count Six	9
E. The Evidence on Count Seven	14
F. The Evidence on Counts Eight, Nine and Ten	17
G. The Evidence on Counts Eleven and Twelve	19
H. The Evidence on Count Fourteen	20
I. The Use in Cross-Examination of Earlier Testimony From Bankruptcy Hearings ..	20
Questions Presented	24
ARGUMENT:	
POINT I—The Evidence Against Moss Was Insuffi- cient On All Counts Other Than Counts Two, Four and Nine	25
POINT II—As To Moss The Convictions On the Sub- stantive Counts Were Multiplicitous	26
POINT III—The Government Made Improper and Prejudicial Use of Moss's Prior Bankruptcy Testimony	30
A. The Significance of Impeachment	31

	PAGE
B. The Significance of The Admissions of Perjury	35
C. The Failure to Object	39
POINT IV—The Errors As To Moss Spilled Over To The Serious Prejudice Of American Identification Products	45
POINT V—Appropriate Relief	45
CONCLUSION	46

TABLE OF CASES

<i>Alkon v. United States</i> , 163 F. 210 (1st Cir. 1908)	34
<i>Bain v. United States</i> , 262 F. 664 (6th Cir. 1920), cert. denied, 252 U.S. 586	43, 44
<i>Bell v. United States</i> , 349 U.S. 81 (1953)	26
<i>Blockburger v. United States</i> , 284 U.S. 299 (1932)	27
<i>Brooks v. Tennessee</i> , 406 U.S. 605 (1972)	32, 33
<i>Bryson v. United States</i> , 396 U.S. 64 (1969)	36
<i>Burrell v. Montana</i> , 194 U.S. 572 (1904)	42, 43
<i>Edwards v. United States</i> , 265 F.2d 302 (9th Cir. 1959)	26, 28
<i>Faretta v. California</i> , 422 U.S. 806 (1975)	32
<i>Fay v. Noia</i> , 372 U.S. 391 (1963)	40
<i>Francis v. Henderson</i> , — U.S. —, 96 S. Ct. 1708 (1976)	41
<i>Glickstein v. United States</i> , 222 U.S. 139 (1911)	35, 36
<i>Gore v. United States</i> , 357 U.S. 386 (1958)	27

	PAGE
<i>Harris v. New York</i> , 401 U.S. 222 (1971) . . .	31, 32, 34
<i>Heflin v. United States</i> , 358 U.S. 415 (1959) . . .	27, 28, 30
<i>In re Snow</i> , 120 U.S. 274 (1887)	29
<i>Jacobs v. United States</i> , 161 F. 694 (1st Cir. 1908) . . .	33
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	40
<i>Kastigar v. United States</i> , 406 U.S. 441 (1972) . . .	34, 35 39, 40
<i>Milanovich v. United States</i> , 365 U.S. 551 (1961) . . .	27
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	31
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	32
<i>Prince v. United States</i> , 352 U.S. 322 (1957)	27, 29
<i>Shotwell Mfg. Co. v. United States</i> , 371 U.S. 341 (1963)	38
<i>Stone v. Powell</i> , — U.S. —, 96 S. Ct. 3037 (1976) . . .	32
<i>Sultan v. United States</i> , 249 F.2d 385 (5th Cir. 1957)	27, 28
<i>United States v. Bentvena</i> , 319 F.2d 916 (2d Cir. 1963)	33
<i>United States v. Bryan</i> , 339 U.S. 323 (1950)	35, 36
<i>United States v. Calandra</i> , 414 U.S. 338 (1974)	32
<i>United States v. Castellana</i> , 349 F.2d 264 (2d Cir. 1965), <i>cert. denied</i> , 383 U.S. 928, <i>reh. denied</i> , 384 U.S. 923	31
<i>United States v. Cohn</i> , 142 F. 983 (S.D.N.Y. 1906) . . .	27
<i>United States v. Diop</i> , 546 F.2d 484 (2d Cir. 1976) . . .	35
<i>United States v. Frumento</i> , (<i>In re Pisciotta</i>), 21 Criminal L. Rep. 2004 (3rd Cir. March 7, 1977) . . .	35
<i>United States v. Gaddis</i> , 424 U.S. 544 (1976)	27

PAGE

<i>United States v. Grasso</i> , Dkt. No. 76-1284, slip op. 2247 (2d Cir. March 9, 1977)	
<i>United States v. Hockenberry</i> , 474 F.2d 247 (1973)	34, 35
<i>United States v. Housand</i> , Dkt. No. 76-1156, slip op. 1999 (2d Cir. February 25, 1977) ...	35, 36, 37, 38, 39
<i>United States v. Klupt</i> , 475 F.2d 1015 (2d Cir. 1973)	46
<i>United States v. Poe</i> , 352 F.2d 639 (D.C. Cir. 1965)	33
<i>United States v. Tramunti</i> , 500 F.2d 1334 (2d Cir.), cert. denied, 419 U.S. 1079 (1974) ...	36, 37, 38, 39
<i>United States v. Weissman</i> , 219 F.2d 837 (2d Cir. 1955)	31

STATUTES

18 U.S.C. § 152	1, 2, 4, 20, 26, 27, 28, 29
18 U.S.C. § 6002	35
11 U.S.C. § 25(a)	20, 30, 32
11 U.S.C. § 25(b)	31
18 U.S.C. § 3284	28
28 U.S.C. § 2255	30

OTHER AUTHORITIES

Federal Rules of Criminal Procedure:

Rule 29	24, 25
Rule 33	24
Rule 35	30
Rule 52(b)	44
<i>Annotation</i> , 22 A.L.R. Fed. 643	34

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1134

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

—v.—

GEORGE MOSS and AMERICAN IDENTIFICATION
PRODUCTS,
Defendants-Appellants.

BRIEF FOR APPELLANTS MOSS AND AMERICAN IDENTIFICATION PRODUCTS

Preliminary Statement

This is an appeal from judgments of conviction entered by Hon. Thomas C. Platt following a jury trial. The defendant Moss was convicted on eleven substantive counts of bankruptcy fraud under 18 U.S.C. § 152 and on one count of conspiracy to violate that section. Moss was sentenced to two years imprisonment, with eighteen months suspended, and to a fine of \$1,000 on each count, amounting to a total fine of \$12,000. The defendant American Identification Products was convicted on one count of fraudulently receiving property from a bankrupt under 18 U.S.C. § 152 and was sentenced to a fine of \$5,000. The Indictment appears at pages 8-18 of Appellants' Joint Appendix.

Statement of the Case

On June 1, 1976, appellants, George Moss and American Identification Products (hereinafter American Identification), were indicted, together with Arnold Rubin, in a fourteen-count indictment. Rubin was charged only in Counts One, Two and Fourteen and was acquitted in each instance. Moss was charged in Counts One, Three and Five with fraudulently concealing items of property in contemplation of bankruptcy. (A. 9-11).¹ In the course of the trial Count Five was dismissed on the government's motion. (T. 1130). In Counts Two, Four, Six, Seven, Eight, Nine, and Ten, Moss was charged with fraudulently concealing items of property from the Trustee in bankruptcy and the creditors. (A. 10-13). In Counts Eleven and Twelve Moss was charged with fraudulently withholding from the Trustee, after the filing of a bankruptcy proceeding, documents relating to the affairs of the bankrupt company. (A. 14-15). In Count Fourteen, Moss was charged with conspiring with Rubin and others unknown to commit offenses in violation of 18 U.S.C. § 152 including particularly those offenses denominated in Counts One and Two of the indictment. (A. 15-16).

Moss was found guilty on all outstanding counts and thus stands convicted on twelve counts—Counts One, Two, Three, Four, Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Fourteen. (A. 296).

American Identification was charged in one count, Count Thirteen, with fraudulently receiving a material amount of property from a bankrupt and was convicted. (A. 15, 297).

¹ References designated "A. . . ." are to the appendix; those hereinafter designated "T. . . ." are to the transcript of the district court minutes.

A. The Background

George Moss, at the time of trial, was 59 years old. He is a graduate of Amherst College and Yale Law School, and a member of the New York Bar but has never practiced law. (T. 1101-02). In 1939 he entered his father's business, Stafford Manufacturing Company, with headquarters and a factory in Brooklyn. The company had been founded by the Moss family in 1868 and manufactured name plates, stencils and related marking devices. (T. 1102-03). Moss was President of the company which employed from fifty to seventy-five people. *Id.* He was in charge of sales and financing, while the factory was supervised by his brother, Nat Moss. (T. 1109).

During the 1960s the company developed a new specialty, the design, manufacture and installation of damage-control identification plates on naval vessels. (T. 1104-09).

By August, 1970, the financial condition of the company had become enfeebled. Because of contract delays and disputes between shipbuilders and the Navy, Stafford found itself unable to obtain prompt payment from shipbuilders for large sums owing to it. (T. 1110-15). In turn Stafford was unable to satisfy all its obligations and had difficulty in meeting weekly payrolls. Moss was advised by counsel that an application to the court for relief under Chapter XI of the Bankruptcy Act would be appropriate. (T. 1116-17). Such an application was made and Stafford was declared a debtor in possession on August 10, 1970. (T. 58). As evidence of good faith the sum of \$8,250, derived from stock held by members of Moss's family, was deposited with the Trustee. When bankruptcy ultimately came this money ended up in the bankrupt estate. (T. 733-35, 746-47, 1173). Moss, in his testimony, claimed to have sunk a further \$8000 of his money into the company in the struggle to keep it alive. (T. 1484). The Trustee testified that Moss appeared to

him to be making a real effort to insure the success of the Chapter XI plan, and that Moss arranged the deposit of \$10,000 with the creditors' committee. (T. 80-81, 85).

These efforts were not successful and Stafford was adjudicated bankrupt on August 10, 1972, exactly two years after the Chapter XI arrangement had been instituted. (T. 58).

B. The Evidence on Counts One and Two

Both these counts relate to a 1967 G.M.C. truck, bearing vehicle identification number C6946F. Count One charged, under 18 U.S.C. § 152, that Moss, on or about or not later than August 10, 1972, fraudulently concealed the truck, which was the property of Stafford, in contemplation of a bankruptcy proceeding. Count Two charged, under the same section of the statute, a continuing concealment of the same truck up to the date of the filing of the indictment. (A. 9-10).

Testimony showed that the truck (worth about \$500 in August, 1972, [T. 1503, 1511-12]) was purchased by Stafford in January, 1967, (T. 19-27), that the Trustee was never informed that the truck was an asset of Stafford, (A. 64-73), that the truck was stored on Long Island on August 11, 1972, (A. 68-87, 47-48), was repainted and relettered, (A. 88-103), and later appeared among the property of defendant American Identification, the corporation that purchased the assets of Stafford at the bankruptcy auction. (A. 145-51).

The evidence certainly indicated Moss's involvement in the post-bankruptcy concealment of the truck from the trustee. Arpad Seifer, a former employee of Stafford, testified that on August 11, 1972, he was told by Arnold Rubin, another employee of Stafford and a co-defendant, that the truck should be left on Long Island, and that, following these instructions, he did leave it there. (A. 45-

48). He also stated that in April, 1973, Moss sent him to Long Island to "buy" a G.M.C. truck, which turned out to be the old truck disguised under new paint. (A. 59-61). This truck was then used by the successor company, American Identification, in which Moss held the chief managerial position. (A. 62).

On direct examination Moss stated that he had asked Rubin to find a place to park the truck on Long Island. (A. 178). On cross-examination Moss admitted he falsified documents that made it appear that Stafford had sold the truck to a John Maxwell in March of 1972 and that Maxwell had sold it to American Identification in December of 1972. (A. 207-17). While the date is not precisely fixed by the testimony, it appears that both of these false documents were written up by Moss after August 10, 1972. (A. 241). There is certainly no evidence that either of them was made out before that date. Moss further admitted that he had cashed checks for \$850 made out to John Maxwell by American Identification, purportedly in payment for the truck, but said that he used the money to pay employees and creditors of Stafford. (T. 1349-51).

Moss explained the falsification and backdating of these documents as having been done out of a sense of panic when he learned that an investigation was being conducted into the provenance of the truck. (T. 1420). He said that he rationalized that he was entitled to the truck since he had spent six to eight thousand dollars of his own money trying to save the business. (A. 241).

While there was thus ample evidence of concealment of the truck after the bankruptcy, there was absolutely no evidence to support the charge in Count One that Moss had done any acts of concealment of the truck prior to or on August 10, 1972, in contemplation of bankruptcy. At the close of all the evidence counsel for

Moss renewed the motion for judgment of acquittal on all counts and particularly pressed the motion with respect to Count One, pointing out that there was no evidence of any act done by Moss with respect to the truck prior to August 11, 1972. Without affording counsel an opportunity to review the transcript and bring the relevant portions to his attention, the court denied the motion on the assertion of the prosecutor that there was testimony that the owner of the premises where the truck was parked in Long Island, a Mr. Steiner, had been approached at the beginning of August. (A. 283-84). In his summation the prosecutor repeated the assertion that Steiner had been approached by Rubin, Stafford's employee, "weeks before the truck was dropped off". (T. 1771).

This assertion was quite mistaken. The relevant portion of Steiner's testimony went as follows:

"Q. Directing your attention to December of 1972, do you recall particularly a lodge meeting when you had a conversation with the defendant, Arnold Rubin?

"A. I don't recall the particular lodge meeting, but I did meet Mr. Rubin at the lodge building.

"Q. Could you tell the jury to the best of your recollection, what did he say to you in December of 1972 and what did you say to him?

"A. He approached me and asked me if I had some space available in my place of business to store a truck." (A. 75).

Testimony followed to the effect that the first rental check for storing the truck was dated September 8, 1972. (A. 81). The references to "December" in the testimony of Rubin, *supra*, are thus presumably typographical errors for "September". But there was absolutely nothing to show any act done by Moss or instigated by him with respect to the truck prior to August 11, 1972, as charged in Count One.

C. The Evidence on Counts Three and Four

These counts relate to a Chevelle station-wagon. Count Three charged fraudulent concealment in contemplation of bankruptcy on or about or not later than August 10, 1972, while Count Four charged a continuing fraudulent concealment up to the date of the indictment. (A. 10-11).

The posture of the evidence here rather closely tracks the testimony presented under Counts One and Two. It is incontestable that the vehicle was owned by Stafford, having been purchased in 1968. (T. 29-38). The Trustee was not informed of its existence (T. 73), and it was not observed by the auctioneer who went to Stafford's premises on September 1, 1972, and therefore was not included in the auction sale of the bankrupt's assets. (A. 111). Later, however, in January, 1973, it was added to the insurance policies of the successor company, American Identification, in which Moss was the chief executive. (A. 127). Further, Moss conceded on cross-examination that, as with the truck, he had, late in 1972, falsified backdated documents that made it appear that the station-wagon had been sold to a John Maxwell. (A. 218-21).

But once again, evidence was strikingly lacking as to any acts of concealment done or instigated by Moss prior to August 11, 1972. Government witness, Arpad Seifer, in a rare moment of intelligibility, stated that he used the station-wagon in the ordinary course of Stafford's business on August 10 and that it was to be found on Stafford's premises up to the close of business on that day. (A. 41). The only evidence that bore on when the station-wagon was moved occurred in another portion of Seifer's testimony and was extraordinarily opaque, both because of the failure to fix dates precisely and because of the witness's great difficulties with the English language. The prosecutor elicited from Seifer that the station-wagon was not on Stafford's premises

when the auctioneer's people were tagging items there late in August. The testimony continued:

"Q. And where was that car, by the way?

"A. The car? It was in the backyard—behind in the yard in his mother's house. Mr. George Moss's mother.

"Q. How do you know?

"A. I see it.

"Q. When did you see it there?

"A. Before I—this is before three weeks. Go down. Sent it down to Mr. Moss. So I was—There was a police there. They sent it down to clean them up with a couple of guys, the garage and the back and everything." (A. 56).

While the date on which Seifer saw the station-wagon in the backyard of Moss's mother's house is not fixed, it must be obvious that it could not have been on or before August 10, since, as shown, *supra*, p. 7, Seifer testified that he used it on Stafford's premises and in the course of Stafford's business on August 10. (A. 41).

In the course of redirect examination, the prosecutor elicited one more, equally opaque, statement from Seifer as to the moving of the station-wagon:

"Q. But you gave that registration to the F.B.I., didn't you?

"A. Which one, not the station-wagon.

"Q. No. Did you ever give it back to anybody?

"A. I gave it to Mr. Moss, the station-wagon.

"Q. When did you give it to him?

"A. When he take hom [sic] the station-wagon. He satisfy I drive hom [sic] the station-wagon. And I don't see a couple of week. Then after I go down with the yellow truck, his mother's house clean him up I said before, clean him up the backyard and the front yard. The house was a mess. When I see the backyard, the station-wagon

there and I don't ask a question of Mr. Moss, what happened to the station-wagon. It is not my business, keep it there, keep it there, the mother's house". (A. 64).

Moss himself denied that he had ever moved the station-wagon or caused any other person to do so. (A. 179-80). His brother, Nat Moss, who was the plant manager of Stafford, testified that it was he who told someone to move it to his mother's house and that the defendant, Moss, had nothing to do with this. (A. 262-65). Thus, while the jury might reasonably have concluded that Moss was involved in concealing the station wagon after the adjudication, there was not one shred of coherent evidence that there was any act of prior concealment on his part, as charged in Count Three.

D. The Evidence on Count Six

Count Six charged the concealment from the trustee of a Clark fork-lift type truck.²

Evidence certainly established that Stafford had taken delivery of a fork-lift from Clark in 1964 on a lease-purchase arrangement (A. 20-25), that the Trustee was not told of the fork-lift's existence (A. 26), that it was not part of the property tagged by the auctioneers (A. 112), and that it was not purchased by American Identification at the auction. (A. 126). When F.B.I. agents went to the premises of American Identification on September 8, 1975, with a search warrant, they found there, among other items, a Clark fork-lift. (A. 134, 162-63). While no attempt was made by the government to show that the American Identification fork-lift was the one

² Count Five, which charged the prior concealment of this fork-lift in contemplation of bankruptcy, was dismissed on the government's motion. T. 1130.

originally purchased by Stafford, Moss himself in his direct testimony appeared to concede that it was the same one. (A. 180).

But Moss was not at the auction sale. (A. 181). He had no full knowledge of what pieces of equipment were purchased by American Identification at the auction. (A. 182). He stated that he never attempted to conceal the fork-lift and that he never thought its presence at the American Identification plant at all strange. (A. 182). Though he was not explicitly able to state this, the natural inference is that he assumed that American Identification had purchased the fork-lift with other pieces of equipment at the auction sale.

The only evidence of any acts done by Moss with respect to the fork-lift came again in Seifer's less than limpid English:

"Q. When the men came to put the tag on the equipment and machinery, where was the fork-lift truck on that day?

"A. Next door.

"Q. Next door where?

"A. 139 58th Street.

"Q. That was the building adjacent to 145 58th Street?

"A. Yes.

"Q. Was there a door, a common door to both buildings?

"A. It's going together, yes. You have a door.

"Q. You have a common door.

"A. Slip in the door outside and inside.

"Q. Outside and inside. Did you see this truck or fork-lift truck in the next door building?

"A. Yes.

"Q. After this truck was placed in the—by the way, do you know who put the truck next door?

"A. George Moss.

"Q. George Moss?

"A. Yes.

"Q. After the truck was placed next door, can you tell us whether or not the door—the inside door was opened or closed?

"A. It was closed.

"Q. Was it locked?

"A. Yes.

"Q. Was there any writing of any kind on that door?

"A. Not inside. Outside.

"Q. Outside. What writing was there outside?

"A. The door is—the office door was signed Galavant [sic] Realty.

"Q. The sign on the outside said Galavant Realty?

"A. Mr. George Moss." (A. 57-58).

While this testimony is in part incomprehensible and sometimes reveals that the witness had no glimmering of the import of the questions addressed to him, a vague impression does struggle through that Moss put the fork-lift truck in a separate building, next door to Stafford's premises, which was occupied by a real estate firm and connected with Stafford by an internal door that was locked afterwards. However, Moss in his direct testimony stated that Galgan Realty (the correct name) had the same address as Stafford, that there was no separate building, that there was no communicating door, that Galgan had in fact no separate offices, that the only space they occupied in Stafford was a drawer in a filing cabinet, and that the only sign with the name Galgan on it was a small sign on the outside of the main access door to Stafford's premises. (A. 201-05). Galgan Realty was not a real-estate-brokerage firm but a corporation that owned buildings and its connection with Stafford

was only the use of the address for the receipt of mail. (A. 201-02). *This testimony by Moss was not attacked or controverted by the government.*³

The only evidence against Moss on this count thus remains the vague, sometimes unintelligible, single, sketchy statement of Seifer, flatly controverted as to its factual basis in defense testimony left quite unchallenged by the government. And even this nebulous accusatory testimony of Seifer's was quite inconsistent with what he had said under oath on an earlier occasion. On cross-examination counsel for Moss elicited that Seifer had told the grand jury that it was an employee of Stafford, called Chuck, and not Moss who had given orders to hide equipment. The next question and answer were:

"Q. And did you tell the Grand Jury that it was this fellow Chuck who hid some equipment somewhere in the building and then locked it up so it couldn't be found and put a sign on it, Galgan Realty?

"A. Yes." (A. 66).

³ Indeed, a document put in evidence by the government confirms that Moss was perfectly frank in disclosing that the address mentioned by Seifer, "139 58th Street", was a part of Stafford's premises where assets of the firm were located. Gov. Ex. 46, (A. 295), was a letter from Irving Schneider, Esq., an attorney for the creditors, to William J. Henry, Esq., an attorney for the Trustee. Copies of the letter were sent to the Trustee and to witness, Fein, the auctioneer. The letter is dated August 23, 1972, and it states that on August 6, 1970, Moss had signed a summary of the assets of Stafford and had stated that the assets were to be found in a number of locations. One of the locations listed by Moss was 139 58th Street. It appears absurd that Moss would have "concealed" a piece of equipment in a place where he had already told the bankruptcy authorities that Stafford assets were to be found. And, in view of this frank disclosure by Moss, if the fork-lift or anything else were at 139 58th Street, then failure to tag it and include it in the auction sale can only be attributed to negligence by the auctioneer's employees and cannot possibly be characterized as concealment by Moss. It must be remembered that Moss was primarily in charge of sales and was not the factory manager.

So weak indeed was the government's case on this count that the prosecutor sought to shore it up by a most improper line of questioning on the cross-examination of Moss. After eliciting that Moss appeared in court to answer to the indictment on June 1, 1976, the prosecutor proceeded as follows:

"Q. It was on that day among other things the counts with respect to the forklift truck were read to you and explained to you by your attorney; isn't that correct, sir?

"A. Yes.

"Q. You had counsel on that day, didn't you?

"A. Yes, I did.

"Q. And you knew exactly what you were charged with, didn't you, Mr. Moss?

"A. I knew what the indictment says.

"Q. You knew all about the fact this forklift truck was charged as having been concealed by you feloniously, illegally, right?

"A. I understood the charge, right.

"Q. Right, you knew that?

"A. I knew the charge.

"Q. Would you tell this jury what efforts you made if any after June 1 of 1976 to show that you had no knowledge about any felonious contact with this truck?

Mr. Taikeff: Objection, he's asking him how he and his counsel prepared this case.

Mr. Levin-Epstein: No, I'm not, your Honor.

The Court: Sustained.

"Q. Tell us this, Mr. Moss. The date that you were indicted did you come to the FBI, say 'Look, this is the explanation of this truck'?

Mr. Taikeff: That's highly objectionable. He has no obligation once he's indicted

The Court: Sustained, you don't have to argue. I sustained your point.

Mr. Taikeff: I understand that. I'm trying to counteract the impact of the question." (A. 242-43).

This blatant injection of prejudice into the case, unhappily left unadmonished by the court, may well have been the basis for the jury's verdict on Count Six, as to which the admissible evidence was so exiguous and so undermined.

E. The Evidence on Count Seven

Count Seven charged Moss with concealing from the Trustee what were originally described in the indictment as "four (4) Benchmark drill presses". (A. 12). The evidence on this count was extremely confusing, revealing a considerable incapacity on the part of witnesses to distinguish between bench presses, power presses, punch presses, drill presses and so forth. Indeed, a government motion was made and granted to amend the language of the count by striking the word "drill" (A. 164), and it appeared from the testimony that "Benchmark" should read "Benchmaster" which is a trade name.

Evidence was presented from witness, Fein, an auctioneer, that he carried out an appraisal of Stafford's property in 1969, in connection with Stafford's borrowing on chattel mortgages. His appraisal showed that at that time Stafford possessed seven Benchmaster power presses whose serial numbers he had listed. (A. 117-19). Fein also testified that at the bankruptcy auction of Stafford's property in 1972, only four Benchmaster power presses were among the goods on sale and that these were purchased by American Identification, indicating that three had vanished between 1969 and the time of the auction (A. 123-24), though the indictment alleged the concealment of four.

But, on cross-examination Fein conceded that eight power presses with no specific designation were sold at

the auction, and later conceded further that it might have been as many as ten. (A. 128-29). He stated that "Benchmaster" was only a brand-name and that such a press might either stand on the floor or sit on a table. (A. 130). Finally, he acknowledged that photographs presented by the defense (Def. Exhs. W-W13), could all be called power presses and that he did not know which were Benchmasters. (A. 131-33). His direct testimony as to how many Benchmaster presses were sold at the auction was thus gutted of any probative value.

The government did prove that, when the search of American Identification's premises was conducted by the F.B.I., the Benchmaster power presses identified by serial numbers in the 1969 appraisal were all present (A. 136-44, 152-62), but this of course would be entirely consistent with their having been bought by American Identification at the auction. Indeed, Nat Moss, the plant manager, testified that all seven were bought by American Identification at the auction. (A. 261).

The only further evidence adduced by the government to show that Benchmaster presses had disappeared in a possibly illegal manner was testimony from witness Knitzer, an auctioneer who appraised the Stafford property on September 1, 1972, in preparation for the auction. (T. 521). He first claimed on direct examination that in performing the appraisal he saw only four Benchmaster power presses (A. 112), but under cross-examination he conceded that the lotting catalog, prepared by the auctioneers, showed thirty-two power presses of various kinds. (A. 113). Attempting to salvage something on redirect examination, the government got Knitzer to say that only four of the power presses listed in the catalog were Benchmasters, but he immediately torpedoed the government's theory again by adding that one photograph shown to him by the defense on cross-examination might be a Benchmaster. (A. 114-15). Finally on re-cross-examination, he conceded that there were power presses in the auction catalog, not identified by name,

some of which might be Benchmasters (A. 116), thus leaving the prosecution with no evidence whatsoever that American Identification did not acquire the presses in a perfectly legal manner at the auction.

The only other witness whose testimony was conceivably relevant to Count Seven was the employee of Stafford, Seifer. He said that on August 10, 1972, Moss told him to load a truck with machinery and take it to Long Beach where it was stored. The machinery, Seifer testified, was from the shop area of Stafford and consisted of "a punch press, two press machines, and a die press machine, two drill presses and parts of machinery". (A. 36). He said that Moss preceded him to Long Beach in his car, then told Seifer to follow Moss's car which proceeded to an empty store where the machinery was unloaded and stored. (A. 37-40).

The next day the foreman told him to load the truck with more material, which consisted of "parts for the printing machinery", "a roller—the motor for the printing machine and a couple of dies". (A. 42-43). This also was taken to the Long Beach store, though Moss was not present on this occasion. (A. 44). The next day Moss told him to rent a truck which was loaded with dies and two shearing machines and some material and taken to the same place on Long Island. (A. 49-53). Some more dies were taken there on August 31. (A. 54-55).

In the first place, whatever Seifer's testimony amounts to, it obviously does not come close to identifying the machinery and material referred to as including the Benchmaster presses that the amended indictment specified. Furthermore, Seifer's testimony, especially as it related to Moss, was seriously challenged. On cross-examination Seifer conceded that when he testified before the bankruptcy referee he had stated that it was Nat Moss who had told him to move the material and that when he testified before the Grand Jury he had said that

someone called Chuck had told him to move the stuff. (A. 65-66). Later the defense was permitted to read into the record the relevant portion of Seifer's grand jury testimony. (A. 257-59). This excerpt refers unequivocally to Nat Moss, appellant's brother, as the source of the orders to move the material. It concludes with the following passage:

"Q. There is no doubt in your mind that Chuck or Raymond Goerecki who was an employee of the Stafford Manufacturing Company at that time told you that at Nat Moss's instruction, this material was being removed in order not to have it there when the people from the Bankruptcy Court came to look. Isn't that right?

"A. Correct. Right." (A. 259).

Appellant Moss testified that he had never caused any working presses to be removed from Stafford's premises and that the only things that were removed, as far as he knew, were old pieces of equipment including antique presses that had belonged to his father. These were no longer operational and did not belong to Stafford but were his personal property. (A. 168-77, 183). Seifer conceded that old equipment that had belonged to Moss's father was stored on Stafford's premises. (A. 63).

In sum, there was no evidence at all that Moss did the acts alleged in Count Seven.

F. The Evidence on Counts Eight, Nine and Ten

These counts relate to checks made out to Stafford that were cashed by Moss through a check-cashing service. Neither the checks nor the proceeds were turned over to the Trustee. (A. 27-29). With respect to the check covered by Count Nine, in the sum of \$1,122.43 issued by Sperry Gyroscope, Moss conceded that he had been aware that it should have been turned over to the Trustee but said that he had cashed the check in order to pay back

wages due to Stafford's workpeople who would otherwise have had to wait for the distribution of the bankrupt estate. (A. 194-97, 206). The employees did not file any claim in the bankruptcy because Moss paid them all their back wages. *Id.* In all he claimed to have paid about \$10,000 in cash to employees in lieu of paychecks that were not honored (A. 198), and this testimony was substantially corroborated. Witnesses Cornish (A. 188-90), Carter (A. 191-93), Defina (A. 259), and Rao (A. 266-67), stated that their paychecks, returned by the bank, were made good in cash by Moss and it was stipulated that six more employee witnesses would have testified to the same effect. (A. 268). Moss's position was that his highest duty was to his workpeople whom he said he viewed as "preferential creditors". (T. 1382).

The checks that were the subject of Counts Eight and Ten were from the firm Surlass Ship Repairs, in the amounts respectively of \$1,000 and \$1,500. (A. 105-108). Moss again cashed these through a cash-checking service and again stated that he used the money to pay wages due to his workpeople (T. 1262-63), but as to these checks he claimed that the money was his personal property and not the property of the bankrupt Stafford. This was because the payment was for actual installation work done on ships by him personally after Stafford had been adjudicated bankrupt and gone out of business, during the period between August 15 and September 22, 1972. (A. 183). Defendant's Exhibit L was a "packing slip" showing that the work had been completed by September 22. (A. 184-85). The work admittedly arose out of a contract between Surlass and Stafford, but Moss claimed that Surlass had earlier paid for the manufacture of the label plates and that the checks referred to in the indictment related solely to his personal work in installing the plates on the ships after the adjudication against Stafford. (A. 237-38). The checks were made out to Stafford, but Moss stated that he had asked Surlass to make out the checks to him personally but had been told that Navy procedures

required that the name of Stafford still be used for the payee. (A. 239). In essence, Moss thus put forward a defense of bona fide belief in a claim of right with respect to these checks. (A. 185-87).

The only other evidence on this point was that given by government witness, De Simone, who was an accounts officer with Surlass. His testimony, and Govt. Ex. 30, showed that the check for \$1000 was drawn on September 1, 1972, and was the last of a series of four payments. (A. 104). His testimony and Gov. Exhs. 32 and 33 showed that the check for \$1500 was dated October 9, 197. (A. 108-109). De Simone did not himself know who actually did the installation work on the ships but he did say that the completion dates for the work would have to be close to the time of final payments and that the work was not completed until after September 1, 1972. (A. 110).

His testimony was thus not in any way inconsistent with the defense of lack of fraudulent intent proffered by Moss.

G. The Evidence on Counts Eleven and Twelve

These counts charged Moss with intentionally and fraudulently withholding from the Trustee documents relating to the property or affairs of Stafford. (A. 14-15). The documents under Count Eleven were the 1972-73 registration papers for the G.M.C. truck that was the subject of Counts One and Two; Count Twelve referred to the 1972-73 registration papers for the station-wagon that was the subject of Counts Three and Four.

The 1972-73 registration for the truck was put in evidence as Gov. Ex. 17 (A. 35), and was shown to be signed by Moss. Seifer testified for the government that he had actual custody of the registration documents for both the truck and the station-wagon and that the truck

registration had been given to him by Nat Moss. (A. 33-34). Moss testified that he had indeed signed the registration but never thereafter had custody of the documents, never knew who had custody of them and never asked anyone to conceal them. (A. 198-200, 244-45). The evidence against Moss on Count Eleven thus amounted only to an inference derived from his signing the registration and the later acts of concealment with respect to the truck.

As to Count Twelve, the government does not appear to have put the 1972-73 registration of the station-wagon in evidence, nor indeed was there any evidence that the vehicle was registered for that year. Thus there was no evidence at all on this count.

H. The Evidence on Count Fourteen

In this count, Moss was charged with conspiracy with co-defendant, Arnold Rubin, and others unknown to commit offenses in violation of 18 U.S.C. § 152. (A. 15-16). Rubin was acquitted on all counts by the jury and there was no evidence at all that Moss conspired with anybody else.

I. The Use in Cross-Examination of Earlier Testimony From Bankruptcy Hearings

Defendant Moss took the stand and so opened himself to legitimate cross-examination. In connection with the bankruptcy proceedings against Stafford, Moss had earlier testified at bankruptcy hearings. Such testimony, being compelled, may not be used against the witness directly or indirectly in any subsequent criminal proceeding.⁴

⁴ 11 U.S.C. § 25(a)(10). The statutory provision is given in full at p. 30 n.8 *infra*.

At the trial the question first came up when counsel for Moss was cross-examining the Trustee, Mr. Goldhaber. Counsel inquired of the Trustee what kind of efforts Moss had made during the Chapter 11 period. The prosecutor interrupted and at the sidebar drew the court's attention to "certain provisions of the Bankruptcy Act".⁵ The matter then slumbered until Moss took the stand. On his direct examination his counsel asked a question the response to which revealed that Moss has testified before the Bankruptcy Court, though no reference was made to the content of the testimony. (A. 165). The prosecutor

⁵ The following exchange took place:

Mr. Levin-Epstein: I just want Mr. Taikeff to know exactly where he's going with this. Under certain provisions of the Bankruptcy Act—~~and~~, of course, I assume he knows that his client has a Fifth Amendment privilege about certain comments or statements that he may have made during the course of the bankruptcy proceeding. If Mr. Taikeff is fully aware of this Fifth Amendment and insists going forward with this line, of course, the Government has no objection. But I want him to be fully aware of the Fifth Amendment privilege.

Mr. Taikeff: To be perfectly honest, I don't know what Fifth Amendment he is referring to when it comes to this particular witness. This witness was not his counsel at any time.

Mr. Levin-Epstein: I am merely making the statement for a complete record.

Mr. Taikeff: Well, can the Government tell us whether this witness was ever counsel personally to Mr. Moss.

Mr. Levin-Epstein: I suggest that he ask his client that.

The Court: I don't know what the significance of the comment is, but apparently you may be treading on some area where your client may be waiving a portion of his Fifth Amendment privilege. Maybe you better check with your client. I don't know. I don't know where you are going. I don't mean I—you haven't told me.

Mr. Taikeff: I appreciate Mr. Levin-Epstein's comment. I just wish to indicate that I—I don't know what his comment means because I don't understand the connection between—

The Court: We will have to wait and see. A. 30-31.

again requested a sidebar at which the following exchange took place:

Mr. Levin-Epstein: Your Honor, if Mr. Taikeff asks the next question, which I anticipate will have to do with any proceedings before the Bankruptcy Court, I wish the Court to recognize that the Government will take the position that any privilege under the Fifth Amendment will be complete and inexorably waived.

The Court: He does that anyway now when he takes the stand.

Mr. Taikeff: He does that when he takes the stand.

Mr. Levin-Epstein: All aspects of the Fifth Amendment are waived, correct?

Mr. Taikeff: That is my understanding, if he takes the stand, he waives the Fifth.

Mr. Engelstein: That is one of the reasons they sometimes do.

Mr. Levin-Epstein: I want to be absolutely clear because this is a bankruptcy case and there are some possible ramifications.

Mr. Taikeff: That is information you have given and I appreciate the efforts you have made to make sure that something untoward did not happen, and I say that with all seriousness. I was not going to go into detail. I just wanted to get the date of his first knowledge and that is it.

Mr. Levin-Epstein: That may be your attempt, Mr. Taikeff, but I merely advised the Court—

The Court: Once he takes the stand anyway he has waived it.

Mr. Levin-Epstein: That includes the Fifth Amendment that accrues under Title Eleven.

The Court: Yes, surely. (A.165-66).

From these exchanges, it appears that the government did not speak as clearly as it might have about the immunity under the statute and that defense counsel was unaware of the provision. Presumably taking defense counsel's unawareness and lack of objection for a waiver, the prosecutor proceeded to cross-examine Moss vigorously with respect to his testimony before the Bankruptcy Court. The cross-examination was devastatingly successful, since it elicited from Moss admissions that on several occasions he had lied to the Bankruptcy Court with respect to the truck and the station-wagon. (A. 222-34). In other instances the prosecutor pressed Moss hard about alleged inconsistencies between his testimony at the trial and his previous testimony before the Bankruptcy Court, though Moss did not concede that the previous testimony was false. (A. 235-36, 246-56).

After Moss's testimony was completed, the defense called his brother, Nat Moss. At this point the prosecutor for the first time referred plainly to the statutory immunity:

Mr. Levin-Epstein: The Government is aware of the provisions of Title 11, U.S. Code, Section 25, Subdivision 10, as amended which provides for an immunity for persons in Mr. Moss's position in a bankruptcy situation. Up to and including this moment, I have not nor has anybody in my office had any contact whatsoever, avoided contact in fact, in any way with Mr. Nathan Moss's testimony in Bankruptcy Court. (A. 260).

The next day, defense counsel, now alerted to the immunity provision, objected to the government's use of the bankruptcy testimony in the cross-examination of Moss. A long colloquy ensued (A. 270-82), from which it can be gathered that the government had been in communication with counsel originally retained by Moss months before the trial, Nancy Rosner Esq., and that one letter sent to her had attached to it a document that made reference to the statutory immunity. When Ms.

Rosner was unable to try the case herself, Moss's trial counsel, Elliot Taikeff Esq., stepped in at a late date and appeared as of counsel to Ms. Rosner, who remained nominal counsel of record though she did not participate in the trial at all. It was not disputed that Ms. Rosner was aware of or had notice of the immunity provision, but Mr. Taikeff was obviously not aware of the section and he stated in a later, post-verdict colloquy that the attachment to the letter sent to Ms. Rosner was never transmitted to him. (A. 294).

The court denied the defense all relief, on the ground of waiver. (A. 262). In his summation the prosecutor relied heavily on the admissions of perjury that he had drawn from Moss by use of the bankruptcy testimony (A. 285-91), inviting the jury not to believe Moss's trial testimony since he was a confessed liar. (A. 292). After the verdict the court stated that Moss might "very well have a ground . . . on appeal on this bankruptcy act question." (T. 2054). Post-verdict motions were addressed to the district court under Rule 29 and Rule 33, F.R. Cr. P., raising, *inter alia*, the statutory immunity point. The motions were denied in all respects.

Questions Presented

1. Whether the evidence, on numerous counts, was sufficient? Was it error to deny defendant Moss's motion for judgment of acquittal on these counts?
2. Whether the substantive counts, as to Moss, were multiplicitous?
3. Whether the sentence as to Moss should be vacated on the grounds of multiplicity, double jeopardy, and insufficiency of evidence on numerous counts?
4. Was it reversibly prejudicial for the government to cross-examine Moss on his previously immunized bankruptcy testimony, even in the absence of timely objec-

tion, when that cross-examination extended to portions of his previous, immunized testimony not shown to be false?

5. Whether the case against American Identification Products was tainted by spill-over from the errors as to Moss?

ARGUMENT

POINT I

The Evidence Against Moss Was Insufficient On All Counts Other Than Counts Two, Four and Nine.

Rule 29 motions were timely made at trial and post-verdict. (A. 283). The analysis of the trial minutes in the Statement of the Case reveals that, with respect to numerous counts, the motion should have been granted. More particularly, as to the substantive Counts One, *supra*, pp. 4-6, Three, *supra*, pp. 7-9, Seven, *supra*, pp. 14-17, and Twelve, *supra*, pp. 19-20, there was no evidence at all against the defendant Moss. As to substantive Counts Six, *supra*, pp. 9-14, and Eleven, *supra*, pp. 19-20, the evidence was of the flimsiest and, as to Count Six, controverted in prior sworn testimony by the only government witness who testified directly on this incident. As to substantive Counts Eight and Ten, *supra*, pp. 17-19, the government never discharged its burden of showing that the property in question belonged to Stafford. As to the conspiracy count, Count Fourteen, once Rubin had been acquitted the record stands devoid of any evidence that Moss conspired with anybody to do anything prohibited by law.

Accordingly the convictions on these counts should be reversed and Counts One, Three, Six, Seven, Eight, Ten, Eleven, Twelve and Fourteen should be dismissed.

POINT II

As To Moss The Convictions On the Substantive Counts Were Multiplicitous.

Impermissible multiplicity in several facets is apparent in the judgment against Moss based on eleven counts under a single statutory section. Concealment of a number of different pieces of property is one offense and not several. *Edwards v. United States*, 265 F.2d 302, 306 (9th Cir. 1959). In reaching such a conclusion in that case the court stated:

We hold that in law and in fact the eight charges constitute but one offense against each appellant. The eight counts were drawn under the first paragraph of Section 152 . . . It is clear to us . . . that Congress did not intend to denounce as a separate offense the concealment by the accused . . . of each separate piece, item or type of property . . . but clearly intended to characterize as one offense the fraudulent concealment by an accused of property belonging to the estate of a bankrupt.

See too *Bell v. United States*, 349 U.S. 81 (1953).⁶

If it is objected that the principle of *Edwards* is applicable only to the series of counts in each separate set (Set 1 [concealment in contemplation], Set 2 [concealment after bankruptcy], and Set 3 [concealing a document]), so that at least three convictions could stand, the first response must be that there is no sense or reason in such a limitation. Congress clearly intended to provide in Section 152 for different ways to proceed against

⁶ The absurdity of any other conclusion is apparent through reflection on the content of Count Seven which charged the concealment of four presses. Could the government properly have expanded that to four counts? If not, what difference should it make that the other counts referred to different kinds of property?

different kinds of fraud where only one type was present and not to multiply offenses. This is demonstrated by the fact that the paragraph of Section 152 that covers concealment in contemplation was added to fill a gap in the law. *United States v. Cohn*, 142 F. 983 (S.D.N.Y. 1906); *Sultan v. United States*, 249 F.2d 385 (5th Cir. 1957).

Similarly, the paragraph covering concealment of documents was surely not intended to create an additional offense when the concealment of the property to which the document related is already charged. Properly understood, the paragraph covers cases where a document is itself the only object concealed and where, in the absence of the provision, no charge would be possible. An example would be a case where the document was evidence of an account receivable.

It is not contended here that the inclusion of the multiplicitous counts in the indictment was a violation of the double jeopardy clause. The elements of the offenses specified in the separate counts are technically different so that, under a narrow view of the "same offense" principle, their juxtaposition is defensible. *Blockburger v. United States*, 284 U.S. 299 (1932); *Gore v. United States*, 357 U.S. 386 (1958). The argument is rather one of statutory construction and draws sustenance from a line of cases in the Supreme Court. See *Prince v. United States*, 352 U.S. 322 (1957); *Heflin v. United States*, 358 U.S. 415 (1959); *Milanovich v. United States*, 365 U.S. 551 (1961); *United States v. Gaddis*, 424 U.S. 544 (1976). In *Heflin*, the Court said, referring to the offense of receiving, concealing, storing or disposing of money:

[It] was not designed to increase the punishment for him who robs a bank but only to provide punishment for those who receive the loot from the robber. We find no purpose of Congress to pyramid penalties for lesser offenses following the robbery. 358 U.S. at 419.

So, under Section 152, the numerous paragraphs of the section are best understood as alternative modes of committing the generic offense of bankruptcy fraud, leaving no loopholes, and not as a rising pyramid of separate offenses involved in one course of conduct.⁷

Other concepts of multiplicity make any limitation on the *Edwards* principle untenable on the facts of this case. For, with respect to Counts One and Two and Counts Three and Four, where concealment in contemplation is paired with later concealment, within each pair it is *the same property* that is the subject of the charges. Counts One and Two refer to the truck while Counts Three and Four refer to the station-wagon. Thus one continuing concealment of each vehicle has been fragmented into two offenses. But the statute itself tells us that concealment is one continuing offense:

The concealment of assets of a bankrupt or other debtor shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied. . . . 18 U.S.C. § 3284.

And see *Sultan v. United States*, *supra*, where the court said:

The crime is concealment of assets . . . and the acts can be done before, as well as after, bankruptcy. 249 F.2d at 386.

The offense of concealment in contemplation was not created to multiply offenses with respect to continuing

⁷ This argument is not based on the concept of included offenses. In *Heflin* the count based on the later conduct was not necessarily included in the count based on the earlier conduct, for it is clear that concealing, storing or disposing of money is not logically entailed in the concept of robbery. The principle of *Heflin* and the other cases cited is rather that the legislature did not intend the robber to be subjected to incremental convictions and punishments. A lesser included offense argument would have a double jeopardy dimension.

conduct as to the same piece of property, but to cover cases where the property has been passed out of the control of the bankrupt before the bankruptcy so that a post-bankruptcy overt act might be impossible or difficult to prove. Cf. *In re Snow*, 107 U.S. 274 (1887).

But the government was content here to make four offenses out of the concealment of the truck and the station-wagon. It subjected the facts to a tortured inflation to support no less than six counts, for Counts Eleven and Twelve relate to the registration papers for the same vehicles. It is hard to imagine that Congress contemplated that the concealment of a piece of physical property and the document evidencing title to it should be separate offenses. The concealment of the latter surely merges into the concealment of the former. See *Prince v. United States*, 352 U.S. 322, 328 (1956).

To summarize Moss's position on this issue, it is first contended that, with respect to all the acts set forth in the substantive counts, a conviction on one count only is defensible. If that argument does not persuade, then at the least Counts Eleven and Twelve (relating to the documents) cannot stand, since they merge into the counts of concealing the vehicles. Furthermore, neither Counts One and Two nor Counts Three and Four can stand together, since they refer respectively to one continuing course of conduct of concealing the same piece of property.

Once it is accepted that it was not the intent of Congress to create separate offenses with respect to facts such as these, then the sentences imposed must be seen as violating that aspect of the double jeopardy clause that prohibits multiple punishments. Moss was fined \$1,000 "on each count for a total fine of \$12,000". (A. 296). (This covered the eleven substantive counts left after the dismissal of Count Five, plus the conspiracy count). But under Section 152 the maximum fine is \$5,000. The \$12,000 fine was thus excessive and illegal.

Moss was also sentenced to two years imprisonment (with eighteen months suspended), and this portion of the sentence was applied generally to all counts. But neither should this part of the sentence be allowed to stand. A judge responding to a verdict of guilty on twelve counts may assess a sentence very differently from one who perceives the offending multiplicity and knows himself to be sentencing only on one or two counts. The safest and fairest corrective action will be to vacate the sentence entirely and remand for resentencing, if any counts should survive this appeal.

The multiplicity point was not raised at the trial but this should make no difference. In the first place the error is plain and, second, since the point goes to the legality of the sentence, it can be raised at any time. Rule 35, F. R. Cr. P.; 28 U.S.C., § 2255; *Heflin v. United States*, 358 U.S. 415 (1959).

POINT III

The Government Made Improper and Prejudicial Use of Moss's Prior Bankruptcy Testimony.

As described *supra*, pp. 20-24, the government made extensive use of Moss's prior bankruptcy testimony to impeach him on cross-examination. The use of such testimony in criminal proceedings is prohibited by 11 U.S.C. § 25(a)(10).⁸ To validate the use of the testi-

⁸ This section, as amended in 1970, provides in pertinent part:

The bankrupt shall . . . submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; *but no testimony, or any evidence which is*

mony the government would have to offer some special justification that rendered the statute inapplicable. Three arguments of such a nature are conceivable and it will now be contended that none of these is persuasive.

A. The Significance of Impeachment

Since the government did not make any use of the bankruptcy testimony in its case in chief but referred to it only as a basis for impeachment in cross-examination, it is necessary to distinguish *Harris v. New York*, 401 U.S. 222 (1971), where it was held that statements made by a defendant to the police in circumstances rendering them inadmissible under *Miranda v. Arizona*, 384 U.S. 436 (1966), were nevertheless properly used to impeach his credibility on cross-examination.

Harris dealt only with the question of how abiding is the exclusionary impact of an investigatory impropriety by the police before trial. The thrust of the decision is that the policies underlying the exclusionary rule go only to the case in chief and should not be extended to shelter the accused from confrontation with his prior inconsistent statements on cross-examination:

Assuming that the exclusionary rule has a deterrent effect on proscribed police conduct, sufficient

directly or indirectly derived from such testimony given by him shall be offered in evidence against him in any criminal proceeding except such testimony as may be given by him in the hearing upon objections to his discharge. [Emphasis added].

Section 25(b) provides, in pertinent part:

Where the bankrupt is a corporation its officers, the members of its board of directors, or trustees or of other similar controlling bodies . . . shall perform the duties imposed upon the bankrupt by this title.

The government did not dispute that Moss's bankruptcy testimony was given in circumstances that bring it under the statute. See *United States v. Castellana*, 349 F.2d 264 (2d Cir. 1965), cert. denied, 383 U.S. 928, reh. denied, 384 U.S. 923; *United States v. Weissman*, 219 F.2d 837 (2d Cir. 1955).

deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief. 401 U.S. at 225.

Harris is thus best perceived as a milestone in that line of cases in the Supreme Court in recent years that views the exclusionary rule as "a judicially created remedy . . . rather than a personal constitutional right of the party aggrieved". *United States v. Calandra*, 414 U.S. 338, 348 (1974). See too *Stone v. Powell*, — U.S. —, 96 S. Ct. 3037 (1976). *Harris* curbs the reach of a judicially fashioned remedy in circumstances where there was no question of coercion in the giving of the statement. The Court pointed out in *Harris* that the "petitioner makes no claim that the statements made to the police were coerced or involuntary". 401 U.S. at 224. But in the present case the statements made at the bankruptcy hearings were coerced in the strongest sense, for they were elicited by compulsory process that was rendered constitutional only by the conferral of immunity in exchange.

The purpose of 11 U.S.C. § 25(a)(10) is to strike and seal a bargain with a witness, to compel him to surrender his fifth amendment rights at the bankruptcy hearing for the substantial *quid pro quo* that such testimony may not in any way be used against him at a criminal trial. That would be a poor bargain if its scope extended only to shutting out the evidence from the government's case in chief, for such a narrow protection would exact the penalty of chilling the defendant's right to testify on his own behalf at any subsequent trial. This would, indeed, render it an unconstitutional bargain for in a number of cases since 1972 the Supreme Court has spoken of the defendant's right to testify as being incorporated in the concept of due process and therefore having constitutional stature. See *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972); *Brooks v. Tennessee*, 406 U.S. 605, 613 (1972); *Faretta v. California*, 422 U.S. 806, 819 n.15 (1975). The right to testify has "come to

be recognized as having an importance similar to the right to be present at one's trial and to present a defense". *United States v. Bentvena*, 319 F.2d 916, 943 (2d Cir. 1963). See too *United States v. Poe*, 352 F.2d 639 (D.C. Cir. 1965).

In *Brooks v. Tennessee*, *supra*, the Supreme Court held that a Tennessee statute, requiring a defendant to testify as the first defense witness or not at all, constituted an "impermissible restriction on the defendant's right against self-incrimination." 406 U.S. at 609. Can it be doubted that annexing a subsequent penalty (the threat of exposure to impeachment) as an incident to the abrogation of a potential defendant's fifth amendment rights is a similar "impermissible restriction"?

In this case there was no pre-trial, investigatory impropriety. The exclusionary rule rationale of *Harris* thus has no relevance at all. Any other result would be unconscionable for it would amount to the proposition that the defendant gives up the benefit of a bargain, statutorily imposed on him and involving the nullification of a constitutional right, when he exercises another constitutional right to testify. This would be a conclusion that would undermine the Bankruptcy Act by rendering the process by which testimony is compelled under that statute unconstitutional.

This question was exhaustively canvassed as early as 1908 in *Jacobs v. United States*, 161 F. 694 (1st Cir. 1908), where the court, deciding the exact question raised here in favor of the defendant, observed:

The underlying philosophy of the statute in question is that, as a matter of justice to the bankrupt, and also for the interest of creditors, he should be encouraged to testify freely in his examination; but he would have no encouragement thereto if, on being prosecuted for an offense, he could not undertake to absolve himself by his own testimony ex-

cept at the risk of being tripped or embarrassed by what he had previously sworn to. 161 F. at 700."

More general, principled (and recent) authorities are amply available. In *Kastigar v. United States*, 406 U.S. 441, 453 (1972), the Court said:

Immunity from the use of compelled testimony . . . prohibits the prosecutorial authorities from using the compelled testimony in *any* respect. . . . (Emphasis in original).

Applying *Kastigar*, the Court of Appeals for the Third Circuit held in *United States v. Hockenberry*, 474 F.2d 247 (1973), that, in a prosecution for perjury before the grand jury, it was improper for the government to have used on cross-examination testimony given by the defendant to the grand jury other than that alleged to be perjured. In reversing the conviction, the court expressly distinguished *Harris*:

In that case [*Harris*] the Court was deciding how broad a sanction is necessary to vindicate the *Miranda* procedural requirement that an arrested suspect must be advised of his right to counsel before he shall be interrogated. In contrast, the question here is the scope of the use immunity that government must afford and the Congress has undertaken to grant a witness in order to justify compelling him to make an incriminating statement. In this situation . . . the mandated *quid pro quo* is immunity co-extensive with the privilege; to-wit, immunity from any damaging use of the compelled truthful statement in a future prosecution. The *Harris* rule does not compel a person to incriminate himself. The abridgement of im-

"To the same effect is *Alkon v. United States*, 163 F. 810, 813-14 (1st Cir. 1908); *Annotation*, 22 A.L.R. Fed. 643, 651.

munity in this case does, and that is its invalidating vice.¹⁰ 474 F.2d at 250.

This reasoning exactly covers this case and was approved by this court in *United States v. Housand*, Dkt. No. 76-1156, slip op. 1999, 2006 (2d Cir. February 25, 1977).

B. The Significance of The Admissions of Perjury

It is quite clear that no grant of immunity extends protection for perjury committed during the immunized testimony. *Glickstein v. United States*, 222 U.S. 139 (1911); *United States v. Bryan*, 339 U.S. 323 (1950);

¹⁰ The Third Circuit Court of Appeals, sitting *en banc*, recently applied *Kastigar* and *Hockenberry* to uphold a contempt order made against a witness who refused to testify after a grant of immunity under 18 U.S.C. § 6002. The witness contended that his testimony could be used to impeach him in a subsequent prosecution. The court stated:

Were we to permit impeachment with immunized testimony, we would then be affording the immunized witness something less than his full fifth amendment protection. . . . We reiterate our adherence to this principle; except as the basis for a prosecution for perjury a witness's immunized testimony may not be used against him. *United States v. Frumento (In re Pisciotto)* 21 Criminal L. Rep. 2004-06 (3d Cir. March 7, 1977).

See too the comments of this court in *United States v. Diop*, 546 F.2d 484 (2d Cir. 1976), where appellant claimed that statements made by him to agents after his arrest were involuntary and should not have been used to rebut his testimony:

A defendant's statements may constitutionally be used during the government's rebuttal case to impeach his testimony even though they cannot be used during the government's case in chief. [Citing *Harris*.] But we are concerned here with the interpretation of a statute [18 U.S.C. § 2501], not with the application of the fifth and fourteenth amendments. . . . The language of the statute makes no distinction between a defendant's confession in evidence during the government's case in chief and during the government's rebuttal case. 546 F.2d at 485-86.

Neither does the language of the Bankruptcy Act make any such distinction.

Bryson v. United States, 396 U.S. 64 (1969). But the question here is whether introduction of earlier immunized testimony in a prosecution *not* for perjury can be justified by a demonstration that *some* of the earlier testimony was perjured. There is no authority exactly covering this situation. Pertinent decisions are those of this court in *United States v. Tramunti*, 500 F.2d 1334 (2d Cir.), *cert. denied*, 419 U.S. 1079 (1974), and *United States v. Housand*, Dkt. No. 76-1156, slip op. 1999 (2d Cir. February 25, 1977).

In *Tramunti* the defendant was charged with committing perjury at an earlier trial. In order to make its proof the government introduced, on cross-examination of Tramunti, responses he had made under a grant of immunity to questions in a grand jury proceeding that preceded the first trial. These responses were inconsistent with testimony given by Tramunti at the perjury trial. This court held that this impeachment was proper:

There is no question but that this evidence was relevant—the Government was seeking to impeach Tramunti's credibility as a witness on trial (*by showing his ability to remember on this trial facts which he could not remember in 1966*) and also to demonstrate prior similar acts (*i.e. his wilful and intentional giving of false trial testimony in the 1971 Imperial case, which was the basis of his present indictment, was preceded by similar conduct before the grand jury*). (Emphasis added). 500 F.2d at 1339.

Thus, while *Tramunti* was concededly not a prosecution for perjury committed in the prior proceeding where the immunized testimony was given, it was nevertheless a prosecution for perjury in a prior proceeding and the very gravamen of the charge was contradictory testimony given on two different occasions under oath. The holding of *Tramunti* thus takes only a small step forward from cases like *Glickstein* and *Bryan*. It might be stated as

follows: testimony given under immunity may be utilized on cross-examination where the prosecution is for perjury in a proceeding subsequent to that in which the immunized testimony was given and where a defense to the charge of perjury in that subsequent proceeding may be rebutted by showing similar acts of perjury in the course of the earlier immunized testimony. Indeed, in commenting on *Tramunti* in *Housand, supra*, this court indicated that *Tramunti* rests on the fact that the prosecution was a perjury one:

We recognized that the basis for the decision was that the testimony was not truthful. If it had been truthful, it would not have been admissible to prove perjury, for its use would have been proscribed by the immunity granted. (Emphasis added). Slip op. at 2006.

There is nothing in *Housand* that in any way can be taken to expand the *Tramunti* holding beyond the ambit of a perjury prosecution.

The necessity to restrict the holding in *Tramunti* to perjury prosecutions is demonstrated further by a vital footnote in *Tramunti* itself.

Appellant's reliance on *Shoewell Mfg. Co. v. United States*, 371 U.S. 341 (1963) is misplaced. Appellant urges that the case is authority for the proposition that grand jury evidence, even if false or evasive, is entitled to fifth amendment protection. However, the language relied upon refers to use of compelled testimony in the prosecution of the underlying crime which had been the subject of the investigation, and not, as here, to its use in an unrelated prosecution for perjury. (Emphasis added). 500 F.2d at 1344, n.5.

Now, in the instant case, the immunity conferral in the bankruptcy proceedings was quite obviously for the purpose of obtaining full disclosure with respect to all

matters relevant to the bankruptcy, and this was purchased by protecting the witness from any use of that testimony in a criminal prosecution which would most likely be for bankruptcy fraud. This is the "underlying crime" and thus the instant case fits exactly under the canopy of the general doctrine expressed in *Shotwell*,¹¹ and reiterated in the *Tramunti* footnote.

Allowing immunized former testimony for purposes of impeachment on the ground that the testimony was untruthful would involve a further enormous complication. A cross-examination that failed to show the former testimony to be untruthful beyond a doubt would amount to an impropriety of constitutional dimension, and a mistrial would have to be declared in such circumstances that double jeopardy doctrine would bar another trial. See *United States v. Grasso*, Dkt. No. 76-1284, slip op. 2247 (2d Cir. March 9, 1977). The only safe rule would be that such a cross-examination cannot proceed until the earlier testimony has been shown to be false. Exactly this position was adopted in a dictum by this court in *Housand*, *supra*, where it was stated that "the original perjury would not be admissible *until* it is shown to be false". (Emphasis in original). Slip op. at 2007. Such a procedure is difficult, if not awful, to contemplate.¹²

¹¹ In *Shotwell* the Court said that where testimony was compelled by a grant of immunity, "the truth or falsity of such a disclosure would then be in relevant to the question of its admissibility." 371 U.S. at 350, n. 10.

¹² *Housand* has a further comment on this:

In *Tramunti*, the fact that the original testimony was given under use immunity became apparent only *after* the trial, so that the court had the benefit of hindsight in determining that the original testimony was *false*. We do not suggest what would have been proper if the question had been directly raised in the *Tramunti* trial—how the judge would have been able to find whether the immunized testimony was true or false. (Emphasis in the original). Slip. op. at 2006, n.8.

In the instant case it is certainly true that the cross-examination revealed beyond a doubt that *some* of the former testimony was untruthful, for Moss admitted that. However, there were occasions when Moss vehemently denied that the prior testimony was false and where no demonstration at all was made of its falsity. (A. 235-36, 246-48, 253-56). On one occasion the government examined Moss about his prior bankruptcy testimony without even suggesting that it was false. (A. 248-52). Thus, even on an interpretation of *Tramunti* most favorable to the government, these portions of the cross-examination clearly were violations of the defendant's constitutional rights as articulated in *Kastigar* and as set out by this court in *Tramunti* and *Housand*. The cross-examination was to a considerable extent a fishing expedition and the government did not even attempt to keep it within the bounds of responses that it believed it could demonstrate to be false. This reckless imprudence robs the government's position of any appeal that it might otherwise have.

C. The Failure to Object

While it is conceded that Moss's counsel of record, Ms. Nancy Rosner, had been made aware of the Section 25 question, it is equally clear that trial counsel for Moss, Mr. Elliot Taikeff, was quite unaware of the provision until he made an objection late in the trial. Mr. Taikeff is not a member of Ms. Rosner's firm. That Ms. Rosner remained counsel of record and that Mr. Taikeff was "of counsel" to her was a purely nominal arrangement. Ms. Rosner took no part in the trial nor any part in the preparation for it once Mr. Taikeff had been brought into the case. As will be developed *infra*, notice to Ms. Rosner or Ms. Rosner's knowledge are simply not relevant factors, since a deliberate bypass by counsel who actually tried the case for Moss would be the least that would be needed to constitute a waiver. It is evident that there was no such deliberate bypass, unless Mr. Taikeff's good faith is put in question, which the government has at no time sought to do.

The right of the defendant that was at issue here was a fundamental one. The immunity was not a gift benevolently bestowed on him; it was a price that the Constitution required be paid to him to purchase the overriding of his fifth amendment rights at the bankruptcy hearing. Thereafter it stood in the place of those fifth amendment rights as a surrogate of constitutional dimension. *Kastigar v. United States*, 406 U.S. 441 (1972). But it is still to be distinguished from a fifth amendment right in a very important respect. A primary fifth amendment claim must generally be asserted and, if it is not, one cannot complain later. But here there was a specific conferral of immunity to which the government was a partner. This affords a settled blanket of protection, imposing an absolute and unrelenting duty on the government to observe the requirements of a statute that binds its hands. It is not an instance of a potential claim that needs to be actualized by the trigger of defendant's voicing an objection. Rather, it is a case of the government's having an affirmative duty to observe the bargain it made when it bought out the defendant's precious constitutional privilege. The defendant gave up something and the government gave up something. The government well knew that and knew that it was reneging and breaking its bargain. This cannot be condoned.

If any waiver of such a vested right is possible it can surely only be in terms of the doctrine set out in the foundation case of *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), by way of an "intentional relinquishment . . . of a known right". Evidently such a relinquishment never occurred here. In *Fay v. Noia*, 372 U.S. 391, 439 (1963), the importance of *Johnson v. Zerbst* was re-emphasized and it was stated that where the right is fundamental the waiver must be the "considered choice" of the defendant. While some of the edges have recently been knocked off *Fay*, this central theme is essentially undisturbed, except in the case of objections going to defects in the institution of the proceedings that ought

to have been made pre-trial. *Francis v. Henderson*, — U.S. —, 96 S. Ct. 1708 (1976).

Two aspects of a case such as the present one combine to persuade that the personal choice of the defendant can be the only acceptable index of waiver. In the first place the right was not a "trial type" one, where an on-the-spot immediate decision by counsel was necessary. Cross-examination is totally foreseeable and counsel had unlimited opportunities to have put this question to the defendant. (In any event, it can hardly be contended that counsel's failure to object was strategically motivated). Second, this is not a case where either the government or the court had an interest in requiring an objection at all. The facts and the law were plain. The government knew about the statute all along and, if the court did not know, it should have known. Thus, we need not be concerned here that no fair opportunity to abstain was given the government and no fair opportunity to correct given the court. Here the government neglected its duty and the court neglected its duty and government's position is that the defendant must pay the price because his counsel was unaware of the law that afforded an objection.

While it is quite true that certain constitutional rights can be waived even by a simple failure to object, this preeminently is not such a case. No imaginable advantage could flow to the defendant (so that the concept of deliberate bypass is virtually inconceivable); no pressured, technical "trial-type" context is involved; the impropriety did not depend on facts known only to the defendant and unavailable to the court or the government in the absence of objection; a fundamental right was involved; the right was specific, depending on a bargain struck with the defendant in the past which the government knowingly invaded.

The prosecutor did make some enigmatic references to the issue. See the excerpts from the minutes, *supra*

pp. 21-23. But these allusions were less than plain and frank; to an extent they were coy and indirect. The government requested a sidebar during the direct examination of the defendant and made reference to waiving a fifth amendment privilege. (A. 165). The court and defense counsel were understandably puzzled and patiently pointed out that every defendant who takes the stand waives his fifth amendment privileges. (T. 1120-21). The prosecutor then referred mysteriously to "possible ramifications" and the "fifth amendment that accrues under Title 11". (A. 166). At this point, the court, no doubt bemused by the prosecutor's teasing hints responded, "Yes, surely". *Id.*

Plain speaking by the prosecutor should have led the court to explain the matter to Moss and to ascertain whether he personally waived his bargained-for immunity. At that point counsel would have been alerted, would have conferred with his client and presumably would have objected, since no purpose can be imagined in not objecting. The decisive factor in bringing about the unhappy outcome was thus the failure of the prosecutor to do enough to observe the promise the government had earlier made to Moss.

Cases that might appear to suggest that the protection of the statute is lost by a failure to object are of considerable antiquity and, on close examination, are distinguishable. In *Burrell v. Montana*, 194 U.S. 572 (1904), appellant had made no objection to the use of bankruptcy testimony against him at any stage of the trial nor had he raised the point on appeal. On appeal he argued rather that the statute's intent was to exempt him from prosecution altogether. The Court held that this was not a correct reading of the statute:

In the case at bar, as we have already said, plaintiff in error did not claim the protection afforded to him by the bankrupt act. He made no objection to the use of the testimony which he

gave before the referee, nor does he now urge its use as error. He broadly claimed and now claims exemption from prosecution. For the reasons we have given the claim is untenable. 194 U.S. at 579.

Burrell is thus vastly different from the present case. In *Burrell* the defendant claimed a protection to which he was not as a matter of law ever entitled. In modern parlance we might well regard this as a tactical decision or deliberate bypass.

Again, in *Bain v. United States*, 262 F. 664, 669, (6th Cir. 1920), *cert. denied*, 252 U.S. 586, the court observed:

Objection by defendant was necessary. True, the statute says the deposition "shall not be offered"; but we cannot construe this language as obviating the right to use by consent, nor the inference that consent is to be implied from lack of objection. [citing *Burrell*.]

However, it is plain that in *Bain* the court was troubled by resting its holding on this ground alone, for it went on to observe:

If we should hesitate to consider this alone an arbitrarily sufficient reason for refusing to disturb a conviction, we would again look into the record to discover how much Bain was hurt by the use of this deposition. It is difficult to find any substantial injury. It does not seem that, as a witness on this trial, he questions or denies anything important that developed in the deposition, or that there was really, in the end, any dispute of fact which was materially affected by anything read to the jury out of the deposition. Such inconsistencies as there were are too trifling to justify thinking that the jury gave any force to them. *Id.*

Thus *Bain* stands only for the proposition that where no objection was made *and the error is harmless*, reversal is not mandated. Further, in *Bain* no objection was made prior to verdict; the point was raised for the first time on a motion for a new trial. In the present case, while the objection was not timely made, it was made vigorously and specifically before the return of a verdict.

The error here is a quite impossible candidate for classification as harmless. In a case where the evidence was non-existent or very thin except on three counts, the prosecutor was able to impale the defendant on admissions of perjury and badger him and attempt to trip him with alleged inconsistencies. (A. 224, 234, 241, 246-56). Reference back to these passages became the central theme of the prosecutor's summation. (A. 285-91).

Under Rule 52(b), F.R. Cr. P., plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. The error here was "plain" in both senses of that term—it was glaringly apparent and it went to the heart of defendant's substantial rights. If the district court had been aware of the provisions of the Bankruptcy Act with respect to immunity at the time the matter was raised in a cloudy fashion, it can hardly be doubted that the court would have *sua sponte* defined the issue precisely for defense counsel who would then have insisted on defendant's immunity. Should the defendant now suffer because the court, like defense counsel, was not aware of the impact of the statute? The integrity of the process repudiates such a conclusion.

POINT IV

The Errors As To Moss Spilled Over To The Serious Prejudice Of American Identification Products.

Moss was the President of Stafford and the chief executive of the successor firm, American Identification. As has been shown, the case against Moss was fatally prejudiced by the improper cross-examination as to his previous bankruptcy testimony and also by the retention of massively multiplicitous counts. With Moss prejudiced and pilloried in this fashion and with his close connection with American Identification, the jury could not have impartially evaluated the evidence against American Identification. For this reason, the conviction of the corporate defendant should also be reversed.

POINT V

Appropriate Relief

In view of the distinct but overlapping arguments presented, it will be as well to set out in summary fashion the relief that we submit is appropriate in the case of the defendant Moss.

1. For insufficiency of evidence Counts One, Three, Six, Seven, Eight, Ten, Eleven, Twelve and Fourteen should be dismissed.

2. If any of these substantive counts survive the insufficiency argument, they, together with Counts Two, Four and Nine, should be reduced to a conviction on one count on grounds of multiplicity.

3. If a number of counts are dismissed, whether on grounds of insufficiency or multiplicity, but any count survives this appeal, the sentence should be vacated and a remand for resentencing should be ordered. With respect

to the fines, vacation of some portion would be necessary, since the fines were consecutive. With respect to the prison term a remand for resentencing should be ordered since it is not safe to assume that a sentence of equal severity would have been imposed if some counts had fallen either for reasons of insufficiency of evidence or multiplicity.¹³

4. The convictions on any counts that survive the above arguments should be reversed and a new trial ordered on the ground of the fatal prejudice introduced by cross-examining Moss on his bankruptcy testimony.

CONCLUSION

In the light of the foregoing the convictions on all counts should be reversed and some counts dismissed. If the convictions on all counts are not reversed there should be a remand for resentencing.

Respectfully submitted,

GRAHAM HUGHES

Attorney for Defendants-Appellants
New York University School of Law
40 Washington Square South
New York, New York 10012
(212) 598-2565

¹³ The sentence imposed in this case cannot be considered lenient and cannot be divorced from the overkill of a fourteen-count indictment in a case covering property of no very considerable value. Relevant here is the comment of this court in *United States v. Klupt*, 475 F.2d 1015, 1016, n.2 (2d Cir. 1973):

In view of the mildness of the sentences imposed, we withhold any comment as to the appropriateness, on the facts of this case, of a ten count indictment.

Klupt was charged with concealing nearly \$14,000 in a bankruptcy fraud but his prison sentence was fully suspended and he was fined only \$3,000.



U.S. DISTRICT COURT
EAST DIST. N.Y.
MAY 5 2 40 PM '77

*Paula
J. G. Moore*



THE ALPERT PRESS INC., 644 PACIFIC ST. BKLYN., N.Y.